

REMARKS

Claims 1-10, 13 and 14 were examined in this application, with Claims 11, 12 and 15-50 being withdrawn as subject to a restriction requirement. Applicants have also added new Claims 51-62, generally conforming to original Claims 1-10, 13 and 14 but specifically directed to a sandal.

Claims 1 and 3 have been amended to more particularly define the invention by including the term "sole" when referring to the "layer" in the first subparagraph of Claim 1 and by improving the grammar of Claim 3 by changing "are" to "is." These amendments deal only with the form of the claims and have no basis whatsoever in the patentability of the claimed subject matter.

New Claims 51-62, specifically directed to a sandal, include the recitation of a sole layer with an upper surface for supporting the user's foot and a bottom surface for ground engagement, where the substantially vertical openings pass from the upper surface to the bottom surface of the sole layer. Of course, this does not limit the possible use of a retention member that passes through or over the sole layer.

No new matter has been added by the amendments made herein. Support for new Claims 51-62 is found not only in original Claims 1-10, 13 and 14, but also throughout the specification, particularly p. 4, lines 1-8, and the drawings, particularly Figures 6, 7, 13A-D, 14A-C, 15A-B, 16A, 17A-B and 18.

With respect to the items raised in the Office Action, the Examiner first discussed the restriction requirement and that applicant elected the species shown in Figures 14A-C, and therefore withdrew Claims 11, 12 and 15-50 without traverse. In this regard, applicants have indicated that the election of the species of Figures 14A-C does not limit the fact that Claims 1-10, 13 and 14 are generic in that they are directed to one or more species, including the species shown in Figures 6-7, 13A-13D, 14A-14C, 15A and B, 16A and B, 17A and B and 18.

Turning to the substantive matters raised, the Examiner rejected Claims 1, 2, 4-6, 8, 9, 13 and 14 under 35 U.S.C. § 102(b) as being clearly anticipated by Jungkind (US 6,138,385). The Examiner also rejected Claims 1-10, 13 and 14 under 35 U.S.C. §

102(b) as being clearly anticipated by Renaudin (US 6,237,255). Applicants respectfully submit that the cited references do not teach every aspect of the claimed invention, nor do they suggest the invention as claimed, such that the rejections should be removed and the claims allowed.

More particularly, the invention of independent Claims 1 and 51 call for an item of footwear having sole layer with an integrally formed toe portion, heel portion and intermediate portion. The claimed intermediate portion has a plurality of openings passing substantially vertically through the sole layer which make the intermediate portion elastically flexible to allow relative longitudinal displacement of the toe and heel portions to vary the length of the sole layer without significant variation in thickness. The footwear also comprises a retention mechanism associated with the toe and heel portions configured for retaining any of a plurality of relative positions between the toe and heel portions.

In sharp contrast to the invention of Claims 1 and 51, the Jungkind reference utilizes a sole having a front section and a rear section with a jointed section therebetween. The jointed section of Jungkind is formed of an undulating or wavy, folded web of a flexible material, with wave crests and troughs that run crosswise to the longitudinal axis of the sole. Adjustment means in the form of a screw passing through substantially horizontal openings in the jointed section (see, col. 2, line 60- col. 3, line 18; col. 4, lines 30-42).

Clearly, the Jungkind reference fails to describe, suggest or even remotely hint at a sole layer having an intermediate (or jointed) area having a plurality of openings passing substantially vertically through the sole layer which make the intermediate portion elastically flexible, as presently claimed. Instead, Jungkind relies on the undulating layer to permit a degree of adjustment between the front and rear sole portions of the sole layer. As such, the Jungkind reference cannot be said to anticipate or render obvious the present claimed invention.

Moreover, the Jungkind reference fails to teach or describe additional claimed elements of the present claimed invention. For example, the invention of dependent Claims 3 and 53 call for the plurality of openings to be deployed in a latticework pattern

when viewed from above. Since the Jungkind reference does not even have vertical openings through the jointed section, it cannot be said that such non-existent openings are in a latticework pattern.

Similarly, present Claims 9 and 59 call for a retention mechanism that includes a stepped resistance arrangement providing a resistive force opposing relative displacement of said toe and heel portions between a plurality of predefined relative positions corresponding to a plurality of different lengths of said sole arrangement. Rather than the stepped positions claimed, the Jungkind reference describes a screw mechanism that can be infinitely adjusted, without predefined positions since the screw can be stopped at any position.

Also, Claims 11 and 61 define a retention member that utilizes a flexible strap and locking member to define the relative position between the toe and heel portions. There is no such description in Jungkind, which only uses the screw embodiment to adjust the relative position between the front and rear sections.

The above noted distinctions demonstrate that the Jungkind reference fails to anticipate or render obvious the present claimed invention. Removal of the rejection over the Jungkind reference is therefore requested.

The same distinctions are applicable between the present claimed invention and the cited Renaudin reference, since Renaudin utilizes a bellows comprising cavities, oriented transversely and filled with compressible material, with closed cells, for elongation of the sole (col. 2, lines 48-57).

Thus, the Renaudin reference does not teach a sole layer with toe, heel and intermediate portions, the intermediate portion having a plurality of substantially vertical openings passing therethrough, with a retention mechanism associated with both the toe and heel portions. In fact, the Renaudin reference does not teach, suggest or hint at any openings through an intermediate portion of the sole layer between the toe and heel portions, instead using a compressible material to provide elongation.

Also as with the Jungkind reference, the Renaudin reference fails to teach or describe additional claimed elements of the present claimed invention, including the

latticework pattern of Claims 3 and 53 or the retention mechanism with a stepped resistance arrangement of Claims 9 and 59.

Based on the above, applicants submit that the Renaudin reference does not anticipate or render obvious the present claimed invention and requests that the rejection over Renaudin be removed.

Finally, for the same reasons as set forth above, applicants submit that new claims 51-62 are patentable over the cited references. With further respect to the new claims, applicants believe that no additional fee is required, since applicants have paid for 50 claims and, with the withdrawal of Claims 11, 13 and 15-50, only 24 claims are pending with the new claims. Notwithstanding, the Director is authorized to charge any additional fee that may be required in connection with this paper to Deposit Account No. 08-1540.

In light of the above, applicants respectfully submit that the amended claims are patentable over the cited prior art and that the application is in proper form for allowance. Favorable consideration and early allowance are therefore respectfully requested and earnestly solicited.

Respectfully submitted,

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